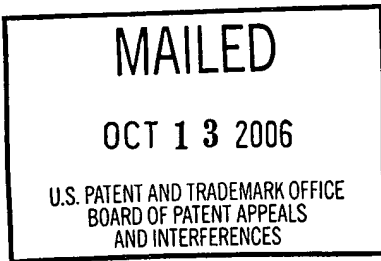


The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte WOLFRAM ZOLLER and JURGEN HOMMOLA



Appeal No. 2006-2152
Application No. 09/889,006
Technology Center 3700

ON BRIEF

Before BAHR, NAPPI and HORNER, *Administrative Patent Judges*.
HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the examiner's final rejection of claims 7-9, all of the claims pending in the application. Claims 1-6 have been canceled.

We affirm.

BACKGROUND

The appellants' invention relates to a pack with at least one holding and carrying handle. Claim 7 is representative of the subject matter on appeal. It reads,

7. A pack with at least one holding and carrying handle comprising at least one flap and a plurality of pack faces, said handle fitted to one of said pack faces along an axis of symmetry of said one pack face at an angle in the range of 2° to 40° parallel or perpendicular to a plane parallel to said one pack face.

A copy of all of the claims on appeal can be found in the appendix to the appellants' brief.

The examiner relies upon the following as evidence of unpatentability:

Sharp

GB 1 545 469

May 10, 1979

The appellants seek our review of the examiner's rejection of claims 7-9 as being unpatentable under 35 U.S.C. § 103(a) over Sharp.¹

Rather than reiterate in detail the conflicting viewpoints advanced by the examiner and the appellants regarding this appeal, we make reference to the final office action (mailed August 19, 2003) and the examiner's answer (mailed December 16, 2004) for the examiner's complete reasoning in support of the rejection and to the appellants' brief (filed September 24, 2004) for the appellants' arguments.

¹ The examiner withdrew the rejection of claims 7-9 under 35 U.S.C. § 112, second paragraph in the Advisory Action dated March 4, 2004.

OPINION

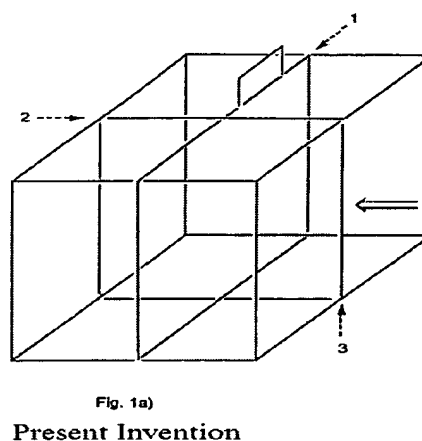
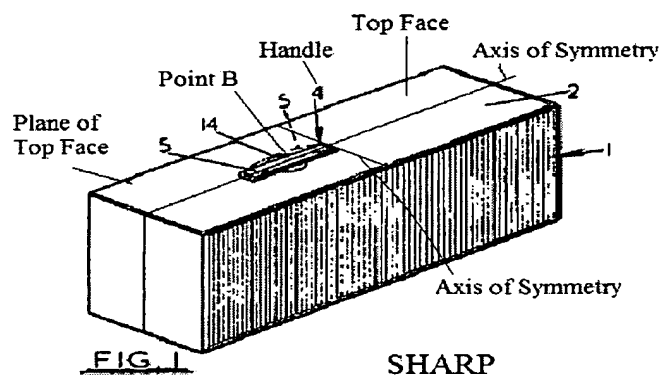
In reaching our decision in this appeal, we have carefully considered the appellants' specification and claims, the applied prior art, and the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations that follow.

In the rejection of independent claim 7, the examiner determined that Sharp teaches a pack with a holding and carry handle having one flap and a plurality of pack faces. The examiner acknowledges that Sharp is silent regarding an angle of inclination of the handle. (Final Office Action, p. 2) The examiner found,

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the handle along an axis of symmetry at an angle in the range of 2° to 20° [*sic*] parallel or perpendicular to a pack face, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. (Final Office Action, pp. 2-3)

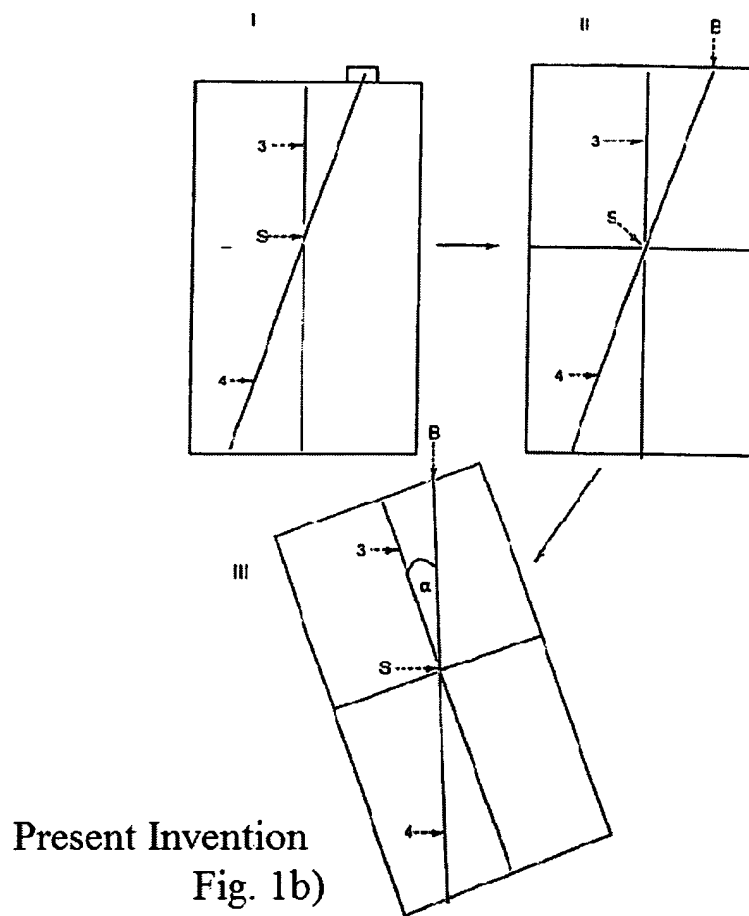
The appellants contend that Sharp does not show an angle of inclination of the handle axis of symmetry. (Appellants' Brief, p. 3) Specifically, the appellants argue, "[t]he slot 3 and handle assembly 4 are aligned with the axis of symmetry of the face 2 and is [*sic*] not disposed at an angle." (Appellants' Brief, p. 4) The appellants further argue that Sharp fails to suggest the beneficial and desirable orientation of the handle at the angle to permit ease and facility in pouring the contents of the pack such that there is no motivation or suggestion in Sharp to provide a handle at an angle to provide this benefit. (Appellants' Brief, p. 5)

We disagree with the appellants' reading of Sharp. The similarity between the structure disclosed in Sharp and the claimed invention is best shown by reference to the figures. Provided below is a side-by-side comparison of Figure 1 of Sharp with Figure 1a of the present invention. Figure 1 of Sharp shows a perspective view of a carton with the handle shown in phantom in its upstanding position. Figure 1a of the present invention shows the eccentric fitting of a handle to a pack according to the invention. We have added axes of symmetry and labels to Figure 1 of Sharp to specifically point out the offset position of the handle, the plane of the top face of the carton where the handle is mounted, and the point on the handle (labeled point B) where the handle is supported by the user's hand.



We also provide below a reproduction of Figure 1b of the present invention, which diagrammatically shows a pack in which the handle is eccentrically fitted and which results in an inclination angle α that is dependent on the eccentricity of the handle on the pack. (Specification, page 3, lines 22-24) The figure labeled (I) is a projection of the lateral face of a pack showing the eccentrically-fitted handle. The

figure labeled (II) is the same as figure (I), except that the handle has been replaced with the label of point (B) for simplicity. The figure labeled (III) shows the position of the pack upon holding of the handle. (Specification, page 4, lines 2-4)



Figures 1a and 1b of the present invention show that the angle of inclination α is the angle between line 4 and line 3. (Specification, page 4, lines 4-5) Line 3 is the central longitudinal axis of symmetry of the lateral face 3. (Specification, page

4, lines 4-5) Line 4 represents the “new” perpendicular that arises when the pack is held by the handle. (Specification, page 4, lines 3-4 and Figure 1b(III)) Line 4 is the line between the center of gravity S and point B. Point B is described as “an idealized support point essentially formed by the hand contact on the handle flap....” (Specification, page 4, lines 13-14)

As seen from Figure 1 of Sharp, the carton of Sharp includes a handle assembly (4) comprising a strip (5) that is shown arched in phantom in Figure 1. (Sharp, page 1, lines 78-82) The “point B” of Sharp is the point at which the user’s hand contacts the strip (5). We find that this point B would be at the longitudinal center of the strip (5). Also, we find that point B of Sharp is offset from the axis of symmetry of the top face of the carton such that the handle is placed eccentrically, as in the claimed invention. As such, when a user lifts the carton by the handle assembly (4), the carton will tilt at an angle, thereby creating a “new” perpendicular, just as in the present invention.

The handle assembly (4) of Sharp is fitted to the top face of the carton along one axis of symmetry at an angle of inclination that is perpendicular with a plane parallel to the plane of the top face, as recited in claim 7. Further, although Sharp does not explicitly teach the exact angle of offset, we find that the figures in Sharp would have taught one of ordinary skill in the art at the time the invention was made that the offset of the handle would result in an inclination angle between 2° and 40°. As such, Sharp teaches all of the limitations of claim 7.

A disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for anticipation is the epitome of obviousness.

In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974); *see also In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982).

We also agree with the examiner that the range of 2° to 40° for the angle of inclination is merely an optimum or workable range that involves routine skill in the art. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) (“[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.”). The appellants argue that Sharp does not disclose a carton in which the contents are to be poured, and thus there is no motivation or suggestion in Sharp to provide a handle at an angle to provide this benefit. (Appellants’ Brief, p. 5) Claims 7-9 do not require a handle for pouring the contents of the pack. Rather, claim 7 recites “at least one holding and carrying handle.” Sharp is similarly focused on a handle for carrying a carton and states, with respect to the location of the handle, that the handle is preferably “located at a position which corresponds to a position of balance of the carton, when filled, so as to facilitate carrying.” (Sharp, page 1, lines 35-38) As taught by Figures 1 and 2 of Sharp, the handle is located at a position offset from the axis of symmetry of the top face to facilitate carrying of the carton. As such, we find sufficient motivation for one skilled in the art, possessed with the knowledge of Sharp, to have offset the handle in order to optimize the inclination angle of the handle depending on the balance of the particular carton once filled to

facilitate carrying. Thus, we sustain the examiner's rejection of claims 7-9² under 35 U.S.C. § 103(a).

CONCLUSION

To summarize, the decision of the examiner to reject claims 7-9 is affirmed.

² The appellants did not separately argue the patentability of the rejected dependent claims 8 and 9. Rather, the appellants relied on the arguments for patentability of claim 7. As such, we treat claims 8 and 9 as standing or falling together with claim 7.

AFFIRMED

Linda E. Horner
LINDA E. HORNER
Administrative Patent Judge

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Application No. 09/889,006

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